SPEECH

OF

HON. THEOPHILUS C. CALLICOT

OF KINGS,

AGAINST THE

PERSONAL LIBERTY BILL.

IN ASSEMBLY, MARCH 14, 1860.

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SPEECH

IN ASSEMBLY, FEBRUARY 3, 1860.

Introduced on notice by Mr. POWERS—read twice and referred to a select committee—reported favorably from said committee, and committed to the committee of the whole.

AN ACT

To secure freedom to all persons within this State.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Every person who shall come or be brought into this State shall be free.

§ 2. Every person who shall hold, or attempt to hold, in this state, any person as a slave in any form, or under any pretence, or for any time, however short, shall be deemed guilty of felony, and confined in the state prison, at hard labor, for a term not less than two, nor more than ten years, and shall also be liable to the party aggrieved for damages in the sum of one thousand dollars.

§ 3. This act shall take effect immediately.

IN ASSEMBLY, March 14, 1860.

The above bill commonly known as the "personal liberty bill," being the special order for this day, and the House having resolved itself into committe of the whole thereon,

Mr. CALLICOT said:—I have not deemed it proper to waste the time of the committee, Mr. Chairman, by attempting to amend this bill, but I now move to strike out the enacting clause. A measure so thoroughly and so radically wrong is past all amendment, and should be wholly rejected. The fact that similar statutes have been enacted in some of the other States in the Union, is no excuse for staining the pages of our statute book by such an enactment.

Let us not forget the Latin proverb, *aliena optimum frui insania*, that it is best to profit by the madness of others, and let us give to the world a new proof of the Horatian maxim—

Aliena opprobria sæpe
Absterrent vitiis—

that the disgrace of others deters us from crime. If the fanatics of New England and other abolitionized States, have legislated to nullify the constitutional act of Congress, let us not follow their traitorous example, let us not share in their shame and disgrace, but rather let us remember that we are Americans as well as New Yorkers—that we are law-abiding citizens of the United States, as well as of the State of New York; let us take an honest and a patrotic pride in declaring that our great State yields a loyal and cheerful and ready obedience to the federal law, and is faithful to the letter and the spirit of the federal constitution.

Sir, the law-making power of this State, so far as it can be constitutionally exercised in regard to the subject matter of this bill, has already been exhausted. Our law now provides that every person brought into this State as a slave shall be free. If gentlemen will take the trouble to look at the Revised Statutes, (Part I, chapter xx title 7, section 1,) they will find these words:—

"No person held as a slave shall be imported, introduced or brought into this State on any pretence whatever. * * Every such person shall be free. Every person held as a slave who hath been introduced or brought into this State contrary to the laws in force at the time shall be free."

Prior to the year 1841, there were two exceptions to this statute. The first exception provided that persons emigrating into this State and bringing with them any person lawfully held in slavery in the State from whence they emigrated, might retain such persons, not as slaves, but as apprentices, until they arrived at the age of twenty-one. The other exception was that any person, not being an inhabitant of the State, who should be travelling to or from or passing through the State, might bring with him any person lawfully held by him in slavery in the State from whence he came, and might take such person with him from this State; but the person so held in slavery should not reside or continue in this

State, more than nine months, and if such residence was continued beyond that time such person should be free.

It was in reference to this last mentioned exception that William H. Seward wrote his famous letter to William Jay and Gerrit Smith, in October, 1848, when he said :—

"I am not convinced that it would be either wise, expedient or humane to declare to our fellow citizens of the Southern and South-western States that if they travel to or from or pass through the State of New York, they shall not bring with them the attendants whom custom or education or habit may have rendered necessary to them. I have not been able to discover any good object to be attained by such an act of inhospitality."

That was, in 1838, the deliberately expressed opinion of the same William H. Seward who is now the chief leader of the party represented by the majority on this floor. But the Abolitionists soon became a political faction of considerable influence in the State, and to secure their votes Mr. Seward found it convenient to change his opinion, and he and his followers have descended from bad to worse until they have finally consolidated themselves with the Abolitionists and formed the Black Republican party which is based upon the one idea of hospitality to the South.

Both the exceptions I have referred to were repealed by chapter 247 of the laws of 1841, and our statute now stands simply and precisely as I have quoted. No further legislation then, is needed to secure freedom to every person brought into this State as a slave, and what we are asked to do by the petitioners for this so-called "personal liberty bill" is to enact that every person who comes into this State shall be free—that every person who comes into this State as a fugitive slave or otherwise shall thereupon *ipso facto* be emancipated and declared free.

Now, sir, let us look at the Constitution of the United States. That sacred instrument which we have all sworn to support, provides (art. 4, sec. 2, sub. 3) that—

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor ; but shall be delivered up on claim of the party to whom such service or labor may be due."

And it further provides (Art. 6, sub. 2,) that—

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the Judge in every State shall be bound thereby, anything in the Constitution or in the laws of any State to the contrary notwithstanding."

The articles I have first cited (Art. 4) was in its substance unanimously adopted by the Convention which framed the Constitution (Journal of Convention 307,) and its meaning is so clear that it would seem to be a work of supererogation to explain it, but since the majority of the select committee who reported this bill have attempted to argue that by the words "persons held to service and labor" the Constitution does not mean slaves, I shall read from a few authorities which are unquestionably entitled to respect.

Mr. Justice Story, the most illustrious writer on jurisprudence whom our country has produced, says in his learned Commentaries on the Constitution of the United States, Vol. III, § 1805:—

"This clause was introduced into the Constitution solely for the benefit of the slave-holding States to enable them to reclaim their fugitive slaves who should have escaped into other States, where slavery was not tolerated. The want of such a provision under the Confederation was felt, as a grievous inconvenience, by the slave-holding States, since in many States no aid whatsoever would be allowed to the owners and sometimes indeed they met with open resistance."

In Thomas Simms's case (7 Cushing's Rep. 285,) Chief Justice Shaw, delivering the opinion of the Supreme Judicial Court of Massachusetts, at the March term, 1851, after reviewing the circumstances under which this provision of the Constitution was adopted, the relations of the several States to each other, and the manifest object which the framers of the Constitution had in view, said:—

"We are to look at the clause in question to ascertain its true meaning and effect. We think it was intended to guaranty that no State should make its own territory an asylum and sanctuary for fugitive slaves, by any law or regulation by which a slave who had escaped from a State where he owed labor or service, into such State or territory, should avoid being reclaimed; it was

designed also to provide a practicable and peaceable mode, by which such fugitive, upon the claim of the person to whom such labor or service should be due, might be delivered up. * *

"It could not but have been known, to the framers of the Constitution, that in the States where slavery was allowed by law, certain rights attached to its citizens which were recognized by the law of nations, and which could not be taken away without their consent. They, therefore, provided for the limited enjoyment of that right, as it existed before, so as to prevent persons owing service under the laws of one State, and escaping therefrom into another, from being discharged by the laws of the latter, and authorized the general government to prescribe means for their restoration. * * * The regulation of slavery, so far as to prohibit States by law from harboring fugitive slaves, was an essential element in its formation; and the union intended to be established by it was essentially necessary to the peace, happiness and highest prosperity of all the States. In this spirit, and with these views steadily in prospect, it seems to be the duty of all judges and magistrates to expound and apply these provisions in the Constitution and laws of the United States; and in this spirit it behoves all persons, bound to obey the laws of the United States, to consider and regard them."

In the U. S. Circuit Court for the Seventh Circuit, in the case of Gilmer vs. Gorham *et al.*, which was an action to recover the value of certain fugitive slaves from Kentucky, who had been rescued from the claimant by a force of abolitionists in Michigan, Mr. Justice McLean, charging the jury, said:—

The defendants' counsel, to some extent, have discussed the abstract principle of slavery. It is not the province of this Court, or of this jury, to deal in abstractions of any kind. With the policy of the local laws of the States, we have nothing to do. However unjust and impolitic slavery may be, yet the people of Kentucky, in their sovereign capacity, have adopted it. And you are sworn to decide this case according to law—the law of Kentucky as to slavery, and the provisions of the Constitution, and the act of Congress in regard to the reclamation of fugitives from labor. This provision of the Constitution is a guaranty to the slave States that no act should be done by the free States to discharge from service in any other State any one who might escape therefrom, but that such fugitive should be delivered up on claim being made. This clause was deemed so important that, as a matter of history, we know the Constitution could not have been adopted without it. As a part of that instrument, it is as binding upon Courts and juries as any other part of it.

In the lucid and elaborate charge delivered to the grand jury, at the April term 1851, of the Circuit Court of the United States for the Southern District of New York, Mr. Justice Nelson said:

"At the time of the adoption of the Constitution by the Convention, on the 17th of September, 1787, slavery existed, I believe, to an extent more or less in each of the States then composing the Confederacy. About one-fifteenth of the population of New York were slaves; the proportion in the New England States and Pennsylvania was much less; and in New Jersey about the same as in New York. All the original States therefore, were interested more or less, in the adoption of this provision into the Constitution, but more especially the Southern States where, speaking generally and without strict accuracy, about half the population consisted of this class. It was, however, anticipated that, in the progress of time, slavery, while it would increase in the South, would diminish and finally become extinguished in the North.

"So just was this provision regarded at the time by the members of the Convention, and so necessary for the security of this species of labor, and the existence of friendly relations between the different members of the Union, that it was adopted without opposition, and by a unanimous vote. It was of the deepest interest to the Southern States, as, without this provision, every non-slaveholding State in the Union would have been at liberty, according to the general law of nations, to have declared free all runaway slaves coming within its limits, and to have given them harbor and protection against the claims of their masters. I need not say, at this day, that such a state of things would have led inevitably to the bitterest animosities, especially between border States, and have been the source of perpetual strife, and of the fiercest passions, between the Northern and Southern portions of the Union. The evil was felt at the time by the Southern portion, as the Articles of Confederation contained no such provision; and it was to guard against that evil, and to lay a foundation that would afford future security, and preserve friendly relations and intercourse of the States, that the provision was incorporated into the fundamental law. No one conversant with the history of the Convention, and particularly with the difficulties that surrounded this subject in almost every stage of its proceedings, can doubt for a moment, that without this, or some equivalent provision, the Constitution would never have been formed. It was of the last importance to the Southern portion of the Union, and could not have been surrendered without endangering their whole interest in this species of property. It is not surprising, therefore, that it is still adhered to with unyielding resolution, and is made the groundwork of a question upon

which the continual existence of a Union thus formed is made to depend."

But, sir, there is another and a later authority on this point—an authority to which it is probable the majority on this floor will bow with greater deference than to our wisest jurists and highest tribunals—I mean the Hon. William H. Seward. In his elaborate speech delivered before the U. S. Senate on the 29th of February of the present year,—a speech of which I observe, thousands of copies are being distributed through the post-office here by the Republican members of this Assembly at the expense of the State Treasury,—he says:—

"Each State reserved to itself exclusive political power over the subject of slavery within its own borders. Nevertheless, it unavoidably presented itself in their consultations on a bond of Federal Union. The new government was to be a representative one. Slaves were capital in some States, in others capital had no investments in labor. Should those slaves be represented as capital or as persons, taxed as capital or as persons, or should they not be represented or taxed at all? The fathers disagreed, debated long, and compromised at last. Each State, they determined, shall have two Senators in Congress. Three-fifths of the slaves shall be elsewhere represented and be taxed as persons. What should be done if the slave should escape into a labor State? Should that State confess him to be a chattel, and restore him as such, or might it regard him as a person and harbor and protect him as a man? They compromised again, and decided that no person held to labor or service in one State, by the laws thereof, escaping into another, shall, by any law or regulation of that State, be discharged from such labor or service, but shall be delivered up on claim to the person to whom such labor or service shall be due."

Even Mr. Seward is obliged to admit this much, and he cannot be brought forward to sustain the majority of the select committee who reported this bill, in their assertion that the clause of the Constitution respecting persons held to service and labor does not relate to fugitive slaves.

The fugitive slave law of 1850, which is now the supreme law of the land, is amendatory of and supplementary to the act of Congress entitled "An Act respecting fugitives from justice and persons escaping from the service of their masters," approved February 12th, 1793. That act was a contemporaneous exposition of the

constitutional provision. It was "a law approved by Washington and Adams and enacted by the fathers and founders of the republic." It was passed about four years after the adoption of the Constitution, by a Congress which included some of the most distinguished members of the Convention, and it would be absurd to suppose that they did not understand the true meaning and intent of the instrument they had framed, better than the wisest and most learned of the members of this House. With all due respect to the honorable gentleman from Ontario, (Mr. Powell,) the honorable gentleman from Chautauqua (Mr. H. Smith,) and the honorable gentleman from Washington (Mr. Savage,) who reported favorably upon this bill, I cannot prefer their construction of the Constitution to that which was placed upon it by the very men who participated in its formation. If I am to be guided by modern lights, I choose to follow the judiciary rather than laymen whose knowledge of constitutional law is so questionable. I look to the Courts as the best and safest exponents.

In the 12th of Wendell, page 316, I find that in a case which arose in 1834, under the fugitive slave law of 1793, our Supreme Court held that—

"The claim or title of the owner remains as perfect within the jurisdiction of the State to which the fugitive has fled, after his arrival and during his continuance, as it was in and under the laws of the State from which he escaped. The service there due and the escape being established, so explicit are the terms of the Constitution, no rightful authority can be exercised by the State to vary the relation existing between the parties."

And again, the Court held in the same case, (Jack vs. Martin,) that the clause of the Constitution under which the fugitive slave law was passed, is "prohibitory upon the States, and forbids the enactment of any law, or the adoption of any regulation in the case of a fugitive slave, by which he may be discharged from the service of his master: and this prohibition upon the State power is unqualified and complete." In the more recent case of Henry v. Lowell, reported in the 16th volume of Barbour, page 268, the Supreme Court, in general term at Oswego, April 1853, Justice Gridley, W. F. Allen, Hubbard and Pratt being present, unanimously decided that the fugitive slave law of 1850 was constitu-

tional. Mr. Justice Gridley, who delivered the opinion of the court, said :—

"It is insisted by the plaintiff's counsel that the act of Congress known as the fugitive slave act is unconstitutional and void ; and therefore that the defendant cannot justify under it. It is not, however, explained in what respect, or on what grounds, the act in question is in violation of the Constitution. The former act of 1793 was adjudged to be in harmony with the Constitution in the case of Prigg vs. The Commonwealth of Pennsylvania, (16 Peters, 239,) by the highest tribunal known to our law, and that decision has been re-affirmed in the 5th of Howard's Rep., 215. No important distinction has been pointed out by the counsel between that act and the act of 1850, and we do not perceive any bearing on the question of constitutionality. In several cases that have occurred, the provisions of the present law have been drawn in question, and the act has been declared constitutional by Justice Curtis and Justice Nelson of the Supreme Court of the United States, by the Supreme Court of Massachusetts, and by other eminent Judges before whom the question has been raised. This uniform current of authority may well excuse us from a discussion of the question upon principle."

These views of the constitutionality of the fugitive slave law are in harmony with the older decisions of Chief Justice Parker, of Massachusetts, (Commonwealth vs. Griffith, 2 Pick., 11 ;) Chief Justice Tilghman, of Pennsylvania, (Wright vs. Deacon, 5 S. & R., 62,) and Mr. Justice Washington, of the U. S. Supreme Court on the circuit, (Hill vs. Low, 4 Wash., C. C., 327.) As Judge McLean has well said, in the case of Miller vs. Querry, (5 McLean's Rep., 469,) "such a weight of authority is not to be shaken. If this question is not to be considered authoritatively settled, what part of that instrument can ever be settled ?"

The conflict between this bill and the act of Congress is so direct that if it is passed and attempted to be enforced, there must be a struggle between the State and Federal authorities which will result in the most disastrous consequences. The fugitive slave law, enacted by Congress in 1850, subjects to fine and imprisonment, and also to civil damages to the party aggrieved, any and every person who shall knowingly obstruct, hinder or prevent the claimant, or his agent, from arresting the fugitive, either with or without process, or who shall rescue or

attempt to rescue the same from the custody of the claimant or his agent, or who shall aid or assist, directly or indirectly, in the escape of the fugitive, or who shall harbor or conceal the same, so as to prevent the discovery and arrest, after notice that such person is a fugitive from service. The bill which we are now asked to pass provides that "every person who shall hold, or attempt to hold, in this State, any person as a slave, or under any pretence, or for any time, however short, shall be deemed guilty of felony, and confined in the State Prison, at hard labor, for a term not less than two, nor more than ten years, and shall also be liable to the party aggrieved for damages, in the sum of one thousand dollars." So that if this bill is passed, there will be a State law to punish any claimant who arrests a fugitive within this State, while the act of Congress declares that whoever hinders the claimant from arresting the fugitive, shall be fined, imprisoned mulcted in damages!

Even supposing that a State law so obviously in conflict with the Federal law, could be enforced effectually, there are reasons of expediency which should deter us from its enactment. If we make the State of New York a secure place of refuge for fugitive slaves, we may expect an influx of colored population, which it is our true policy to discourage rather than invite. If under the regime of the Republican party, the Constitution is to be so amended as to allow all the adult male negroes in the State to vote, and all the slaves who escape from their masters, and take refuge here, are to be protected from reclamation, New York will become a negro paradise, and our population will be as mongrel as that of Mexico or South America.

But, Sir, I will not trespass upon the time of the committee by urging considerations of expediency. I am willing to rest my opposition to the bill on firm, constitutional ground.

The act of Congress being clearly constitutional, and being the supreme law of the land, the majority here will violate their oaths and will be morally guilty of both perjury and treason if they pass this "personal liberty bill" to nullify that act. If this bill is placed on our statute book, it will threaten with criminal

punishment all who dare to do their duty in obedience to the federal law, it will challenge and provoke a conflict between the State and federal authorities which may terminate in bloodshed and all the horrors of civil war. It will be a usurpation of power, openly defying and setting aside the constitutional authority of the federal government, and tending to subvert the supremacy of the laws and the integrity of the Union.

Let me then appeal to gentlemen to pause ere they give their votes to such a disgraceful and disastrous measure. Let me entreat them to remember that they are sitting here under the sanction of their constitutional oaths, and that they have a higher duty to perform than any supposed obligation to a party which panders to fanaticism for the purpose of securing the suffrages of political abolitionists. Let me hope that there will be enough votes to aid the Democracy in defeating this bill from those moderate Republicans who feel that their adherance to party is of less importance than their regard for the honor and welfare of the State, their obedience to the supreme law of the land, their fidelity to the constitution, and their duty to the whole Union.